



**Federal Communications Commission  
Washington, D.C. 20554**

November 19, 2010

*In Reply Refer To:*  
1800B3-MM

Donald E. Martin, Esq.  
Counsel, Umpqua Christian Radio  
P.O. Box 8433  
Falls Church, Virginia 22041

Mr. Todd Urick  
Portland Radio Authority  
Broadcast Consultant  
P.O. Box 4301  
Davis, California 95617

In re: New NCE(FM), Tiller, Oregon  
Facility ID No. 176676  
Umpqua Christian Radio  
File No. BNPED-20071022AER

**Petition to Deny**

New NCE(FM), Glendale, Oregon  
Facility ID No. 176394  
Portland Radio Authority  
File No. BNPED-20071022AOM

Gentlemen:

We have before us: (1) the above-referenced application, filed by Umpqua Christian Radio ("Umpqua") for a new, noncommercial educational ("NCE") FM station in Tiller, Oregon; (2) the above-referenced application, filed by Portland Radio Authority ("Portland Radio") for a new NCE FM station in Glendale, Oregon; (3) a Petition to Deny Umpqua's application ("Petition"), filed by Portland Radio on May 25, 2010; and (4) a Motion for Extension of Time filed by Umpqua on June 9, 2010. Umpqua and Portland Radio were the only applicants in NCE MX Group 210.<sup>1</sup> In its Petition, Portland Radio contests the Commission's tentative decision to grant Umpqua's application, as proposed in the Commission's

---

<sup>1</sup> *Media Bureau Identifies Groups of Mutually Exclusive Applications Submitted in the October 2007 Filing Window for Noncommercial Educational FM Stations*, Public Notice, 23 FCC Rcd 3914 (MB 2008).

April 26, 2010, *Comparative Consideration Order*.<sup>2</sup> For the reasons set forth below, we grant the Petition in part, dismiss Umpqua's Motion for Extension of Time, dismiss Umpqua's application, and accept for filing Portland Radio's application.

**Introduction.** Pursuant to established procedures,<sup>3</sup> the *Comparative Consideration Order* tentatively selected Umpqua's application for grant because, as an established local applicant, Umpqua had received a greater number of points than Portland Radio.<sup>4</sup> Portland Radio timely filed its Petition on May 25, 2010. It asserts that Umpqua: (1) lacked reasonable assurance, or any assurance of access to its proposed site;<sup>5</sup> (2) falsely certified that its proposal was excluded from environmental processing under Section 1.1306 of the Commission's Rules ("Rules");<sup>6</sup> and (3) did not provide sufficient proof that it was an "established local applicant."<sup>7</sup> Portland therefore argues that Umpqua's application must be dismissed and that Portland Radio's application should be granted as a singleton.<sup>8</sup> Although Umpqua filed a Motion for Extension of Time to respond to the Petition, it ultimately did not file a response.

**Discussion.** Section 309(d) of the Communications Act of 1934, as amended ("Act") states that a petition to deny must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with Section 309(a) of the Act.<sup>9</sup> We find that MPR presents specific factual allegations sufficient to meet this standard.

**Site Assurance.** An applicant seeking a new broadcast facility must, in good faith, possess "reasonable assurance" of a transmitter site at the time it files its application.<sup>10</sup> It is well established that the specification of a transmitter site in an application is an implied representation that the applicant has

---

<sup>2</sup> See *Comparative Consideration of 32 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations Filed in the October 2007 Filing Window*, Memorandum Opinion and Order, 25 FCC Rcd 5013, 5029 (2010) ("*Comparative Consideration Order*").

<sup>3</sup> See 47 C.F.R. § 73.7003 (point system selection procedures); see also *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Report and Order, 15 FCC Rcd 7386 (2000), Memorandum Opinion and Order, 16 FCC Rcd 5074, 5105 (2001), *reversed in part on other grounds*, *NPR v. FCC*, 254 F.3d 226 (D.C. Cir. 2001). An applicant receives three points by certifying that it has been local and established for at least two years. 47 C.F.R. § 73.7003(b)(1).

<sup>4</sup> See *Comparative Consideration Order*, 25 FCC Rcd at 5041.

<sup>5</sup> Petition to Deny at 1-2.

<sup>6</sup> *Id.* at 3. 47 C.F.R. § 1.1306.

<sup>7</sup> Petition to Deny at 4-6. In light of our action on the site availability issue, we need not address the remainder of the Petition.

<sup>8</sup> *Id.* at 1-2.

<sup>9</sup> See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff'd sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sept. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (petitions to deny must contain adequate and specific factual allegations sufficient to warrant the relief requested.).

<sup>10</sup> See, e.g., *Port Huron Family Radio, Inc.*, Decision, 66 RR 2d 545 (1989); *Radio Delaware, Inc.*, Memorandum Opinion and Order, 67 RR 2d 358 (1989).

obtained reasonable assurance that the site will be available.<sup>11</sup> While some latitude is afforded such reasonable assurance, there must be, at a minimum, a “meeting of the minds resulting in some firm understanding as to the site’s availability.”<sup>12</sup> To establish reasonable site assurance for sites located on government property, applicants need only show a mere willingness by the government agency to entertain a request for the use of the land in question.<sup>13</sup>

Here, Umpqua proposed a site located on Red Mountain in the Tiller District of Oregon’s Umpqua National Forest.<sup>14</sup> The Petition includes an email from Wes Yamamoto, Forester in charge of the Tiller District, in which he states that use of the site, as proposed in Umpqua’s application, is neither authorized nor suitable because it lacks electricity.<sup>15</sup> The Commission has held that applicants which specify sites that are found to be “technically unsuitable” by a government official lack reasonable site assurance.<sup>16</sup> In the absence of evidence to rebut the Petition’s claims, we find that Umpqua lacked reasonable site assurance and dismiss its application.

*Portland Radio Application.* With the dismissal of Umpqua’s application, Portland Radio is the sole remaining applicant. We therefore accept Portland Radio’s application for filing. If, after a 30-day petition to deny period has run, there is no substantial and material question concerning its grantability, we intend, by public notice, to grant Portland Radio’s application.

**Conclusion.** Accordingly, IT IS ORDERED, that the Petition to Deny filed on May 25, 2010, by Portland Radio Authority IS GRANTED to the extent indicated herein and IS DISMISSED in all other respects.

---

<sup>11</sup> See, e.g., *William F. Wallace and Anne K. Wallace*, Memorandum Opinion and Order, 49 FCC 2d 1424, 1427 (1974); *South Florida Broadcasting Co.*, Memorandum Opinion and Order, 99 FCC 2d 840, 842 ¶ 3 (1984).

<sup>12</sup> *Genesee Communications, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 3595 (1988). The applicant need not own the proposed site and may even work out the final details for a lease sometime in the future. The reasonable assurance standard is satisfied by “[s]ome clear indication from the landowner that he is amenable to entering into a future arrangement with the applicant for use of the property as its transmitter site, on terms to be negotiated....” *Elijah Broadcasting Corp.*, Memorandum Opinion and Order, 5 FCC Rcd 5350, 5351 (1990).

<sup>13</sup> See *Kemp/Mesquite, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 15291, 15292 (2000) (citing *Warren Price Communications, Inc.*, 5 FCC Rcd 2906, 2908 (1990)).

<sup>14</sup> The Umpqua National Forest is part of the United States Department of Agriculture Forest Service. See <http://www.fs.fed.us/r6/umpqua/>.

<sup>15</sup> Petition at Attachment 2. The Commission has relied upon electronic mail transmittals as evidence of reasonable site assurance. See, e.g., *Les Seraphim and Mana’o Radio*, Memorandum Opinion and Order, 25 FCC Rcd 2785, 2788-89 (MB 2010).

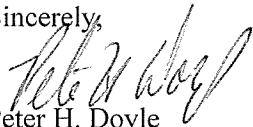
<sup>16</sup> *Ketchum, Jerome and Rupert, Idaho, and Coalsville, Naples, Huntsville, South Jordan, Toole, Dale, Salina, Parowan and Payson, Utah*, Report and Order, 19 FCC Rcd 292, 295 (MB 2004) (submitted letter from District Ranger at Sawtooth National Forest stating that no electricity or roads were available and the proposed transmitter site was located in a habitat for wintering wildlife); *Grand View, Idaho*, Report and Order, 15 FCC Rcd 2768 (MMB 2000) (letter from a federal official at the Bureau of Land Management stating that land was unavailable for a transmitter site).

IT IS FURTHER ORDERED, that the Motion for Extension of Time to reply filed on June 9, 2010, by Umpqua Christian Radio, IS DISMISSED.

IT IS FURTHER ORDERED, that the application of Umpqua Christian Radio (File No. BNPED-20071022AER) IS DISMISSED.

IT IS FURTHER ORDERED, that the application of Portland Radio Authority (File No. BNPED-20071022AOM) IS ACCEPTED FOR FILING.

Sincerely,



Peter H. Doyle  
Chief, Audio Division  
Media Bureau

cc: Mr. Donald L. Bovee, Umpqua Christian Radio  
Ms. Fawn Williams, Portland Radio Authority